

14248
RECORDATION NO. Filed 1425

December 29, 1983

JAN 9 1984 12 00 PM
INTERSTATE COMMERCE COMMISSION

4-009A069

No.
Date JAN 9 1984
Fee \$ 50.00
ICC Washington, D.C.

Secretary of the Interstate
Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

RE: Recordation of Security Agreement
Covering Railroad Cars

Dear Secretary:

In accordance with the regulations of the Interstate
Commerce Commission, I am forwarding the following inform-
ation and documents:

Names and Addresses of the Parties to the Transaction

1. Debtor:

The Fifth Third Leasing Company
Fifth Third Center
Cincinnati, Ohio 45202

2. Secured Party:

The Western and Southern Life
Insurance Company
400 Broadway
Cincinnati, Ohio 45202

Covered Equipment

35 4000-cubic capacity Pressure Differential
(PD 4000) Covered Hopper rail cars, manufactured
by North American Car Corporation, and bearing
the numbers PGDX 101-135, each number inclusive.

Included herewith are the original security agreement
and two certified copies thereof, and a check in the amount
of \$50.00 to cover the filing fee. Please return the original
document to Thomas C. Rink at 2100 Central Trust Center,
Cincinnati, Ohio 45202.

RECEIVED
JAN 9 12 26 PM '84
I.C.C.
FEE OPERATION BR.

December 29, 1983

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Your assistance in this matter is greatly appreciated,
and if you have any problems or questions, please contact
the aforementioned Mr. Rink at (513) 621-2120.

Sincerely,

THE WESTERN AND SOUTHERN
LIFE INSURANCE COMPANY

ap
By: 

Wendall Sullivan

Title: Vice President

By: 

W. F. Ledwin

Title: Vice President

Interstate Commerce Commission
Washington, D.C. 20423

1/9/84

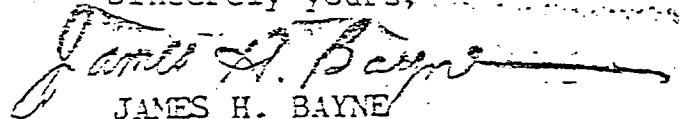
OFFICE OF THE SECRETARY

Thomas C. Rink
2100 Central Trust Center
Cincinnati, Ohio 45202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/9/84** at **12:35PM** and assigned re-recording number(s). **14248**

Sincerely yours,


JAMES H. BAYNE
Secretary

Enclosure(s)

JAN 9 1984 12 25 PM

SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

AGREEMENT, dated December 30, 1983 between THE FIFTH THIRD LEASING COMPANY, having its office at Fifth Third Center, Cincinnati, Ohio 45202 (the "Debtor") and THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY SEPARATE ACCOUNT A, having its office at 400 Broadway, Cincinnati, Ohio 45202 (the "Secured Party").

ARTICLE I

Creation of Security Interest

1. Debtor hereby grants to Secured Party a security interest in the equipment described in Schedule A hereto attached and any and all substitutions, replacements, and accessions thereto or therefor to which Lessor acquires an interest, under the Lease (defined below) and the proceeds thereof, including without limitation insurance proceeds (the "Equipment").

2. In addition, Debtor hereby grants to Secured Party an assignment of and security interest in all of Debtor's rights, in and to that Equipment Lease dated December 29, 1983 between Debtor as Lessor, and The Procter & Gamble Manufacturing Company as Lessee, (the "Lease") and the Guaranty Agreement between the Debtor and Procter & Gamble Company as Guarantor dated December 29, 1983 (the "Guaranty") including without limitation, any and all rents, reserved rents, proceeds of sale from sale of the Equipment, amounts payable by the Lessee in lieu of rent during periods of rental abatement, any and all other amounts due under the Lease and the Guaranty, and the proceeds of the foregoing. The rents and other sums received shall be held by Secured Party, and so long as no Event of Default has occurred and is continuing under the Note, as hereinafter defined, or this Security Agreement, or, which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, all such rents and other sums shall be paid and applied as follows: (a) The amounts from time to time received by Secured Party which constitute payment of Rent under the Lease shall be applied first to the payment of all amounts of principal and interest then due and payable under the Note and any balance of such payment remaining shall be paid to Debtor; (b) In the event that the Lessee under the Lease shall pay the "Casualty Value" of any "Unit" (as such terms are defined in the Lease) pursuant to the provisions of the Lease, the Lender shall apply as a partial prepayment of the Note an amount equal to the then outstanding principal balance of the Note multiplied by a fraction, the numerator of which is the purchase price of the Unit for which the Casualty Value is being so paid and the denominator of which is the purchase price of all Units which are then being leased pursuant to the Lease. Such purchase prices shall be determined from those listed on the Acceptance Supplement(s) to the Lease. Upon any such partial prepayment, each installment thereafter payable on the Note shall be reduced in the same proportion as the principal amount of the Note has been reduced; (c) The amounts from time to time received by Secured Party as tax indemnity payments will be paid to Debtor.

The Equipment, the Lease, the Guaranty and all rights assigned thereto under this Security Agreement are hereinafter collectively referred to as the "Collateral."

3. The Collateral is given to secure the payment of up to \$1,642,427.43 together with interest thereon and any other sums due as provided in a Promissory Note of Debtor of even date herewith payable to the order of Secured Party, and any renewal, modification, extension or re-financing (hereinafter referred to as the "Note"). The Collateral shall also secure Debtor's obligations and liabilities arising out of Debtor's covenants, warranties and representations contained herein.

ARTICLE II

Debtor's Covenants, Representations and Warranties

The Debtor covenants, represents and warrants that:

1. The Equipment is leased to The Procter & Gamble Manufacturing Company ("Lessee") pursuant to the Lease. Except for (i) the security interests granted hereby, and (ii) Lessee's rights under the Lease, Debtor is the sole owner of the Collateral, which is free and will remain free of any lien, security interest or encumbrance, and Debtor will defend the Collateral against all claims and demands, which Secured Party deems to be adverse to its interests, of any person at any time claiming the same or any interest therein. In making the foregoing representation, warranty and covenant, Debtor is relying, in part, upon the Bill of Sale delivered to Debtor by North American Car Corporation and the opinion of counsel to that corporation that Debtor, by such Bill of Sale, received title to the Equipment as sole owner thereof and that upon delivery of such Bill of Sale, Debtor's title was clear, free and unencumbered except for Lessee's rights under the Lease and the Secured Party's rights under this Agreement.

2. Debtor's execution of this Agreement has been duly authorized by all necessary action, and creates binding obligations as stated herein.

3. The Equipment is not and shall not be affixed to real estate; and it is and shall be kept at the location designated in the Lease, where Secured Party may inspect it at any reasonable time as limited by the Lease. Debtor will not remove (or permit the removal of) the Equipment from said location without the prior written consent of Secured Party, except as permitted by the Lease. The Equipment will not be or suffered to be wasted, misused, abused or to deteriorate, except for ordinary wear and tear, and will not be used in violation of any law, ordinance or regulation of any governmental authority insofar as it adversely affect the value of the Lease, Equipment or the security interests granted hereunder.

4. The Equipment shall be insured with such carriers and in such amounts and against such risks as shall be satisfactory to Secured Party, with policies payable to both Secured Party and Debtor, as their interests may appear. All policies of insurance shall provide for thirty (30) days' written notice of cancellation to Secured Party, and Secured Party shall be

furnished with a certificate of insurance or other satisfactory compliance with the above requirements, together with a complete copy of the policies. Debtor hereby appoints Secured Party the attorney for the Debtor in endorsing settlement drafts and hereby assigns to Secured Party all sums which may become payable under such insurance, including return premiums and dividends, as additional security for the indebtedness secured hereby. Notwithstanding the foregoing to the contrary, Secured Party agrees that Debtor shall not be required to maintain insurance for loss of, damage to, or other casualty to the Collateral and for public liability therefor so long as such insurance is required to be maintained by Lessee pursuant to the Lease.

5. Debtor will pay or cause to be paid when due all taxes and assessments upon the Collateral or its operation or use.

6. At its option, and without any obligation to do so, Secured Party may discharge or pay any taxes, liens, security interests, or other encumbrances at any time levied or placed on or against the Collateral or Debtor in breach of this Agreement, and may pay for insurance on the Collateral (but only to the extent such insurance is required to be maintained by Lessee pursuant to the Lease) and may pay for its maintenance and preservation. Debtor agrees to reimburse Secured Party on demand for any such payment made, or expense incurred pursuant to the foregoing authorizations with interest thereon at the rate set forth in the Note from the date of demand to date of payment.

7. Debtor shall execute from time to time, alone or with Secured Party, any UCC Financing Statements or other documents and do such other acts considered by Secured Party to be reasonably necessary or desirable to perfect or protect the security interests hereby created, and pay all costs and expenses (including without limitation reasonable fees and expenses of counsel and filing fees) related to the preparation and filing of any financial statements, continuation statements or other documents related to the perfection or protection of the security interests hereby created. Debtor hereby authorizes Secured Party as Debtor's agent and attorney in fact to execute and file in any appropriate office UCC financing statements and similar instruments signed by Secured Party alone.

8. If an event of Default occurs and is continuing, Debtor hereby appoints the Secured Party as Debtor's true and lawful attorney, with full power of substitution, to enforce Debtor's rights as Lessor under the Lease, and to take any action which the Secured Party may deem necessary or appropriate to create, perfect, protect and preserve the security interests of the Secured Party in the Collateral. Notwithstanding the foregoing, Debtor will, upon written direction from the Secured Party and at Secured Party's expense, take all actions necessary or desirable, including without limitation litigation, to enforce Debtor's rights in the Lease and in such event will pay over to the Secured Party all profits received from any such action.

9. The Debtor has delivered to Secured Party the original Lease and the original Guaranty assigned hereunder, and all other copies of the Lease

and the Guaranty in existence are marked on their faces and signature pages to indicate their status as duplicate counterparts.

10. There is no pending or threatened litigation against Debtor other than as set forth on its Balance Sheet dated _____ ("Balance Sheet"), a copy of which has been delivered to Secured Party, and the Balance Sheet discloses all of the debts, liabilities and obligations of the Seller, whether accrued, absolute, contingent, or otherwise due or to become due (including, without limitation, liabilities for taxes of any kind whatsoever) or arising out of transactions occurring, or any state of facts existing, on or prior to the date of the Balance Sheet.

11. Within 120 days of the end of each fiscal year the Debtor shall furnish to Secured Party audited financial statements for the year just ended which financial statements shall be prepared and signed by an independent certified public accountant.

12. The Debtor shall furnish Secured Party with such other financial information as Secured Party shall reasonably request from time to time.

ARTICLE III

Events of Default

Debtor shall be in default under this Security Agreement upon the happening of any of the Events of Default specified in the Note.

ARTICLE IV

Secured Party's Remedies

Upon default hereunder, Secured Party shall have the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State of Ohio. Without limiting the generality of the foregoing, Secured Party may upon default exercise the following rights and remedies:

1. Secured Party may peaceably by its own means or with judicial assistance enter the premises where any Collateral is located and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises, and Debtor will not resist or interfere with such action.

2. Secured Party may exercise any of the rights of the Lessor under the Lease or the Guaranty.

3. Secured Party may require Debtor to assemble all or any part of the Collateral and make it available to Secured Party at any place designated in a notice sent to Debtor.

4. Debtor hereby agrees that a notice sent to it at least ten (10) days before the time of any intended public sale or of the time after which any

private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition.

5. Secured Party may incur reasonable attorney's fees and expenses in exercising any of its rights and remedies upon default, which fees and expenses shall become parts of Secured Party's reasonable expenses of retaking, holding, preparing for sale and the like. Debtor will reimburse Secured Party on demand for all such expenses.

6. Debtor agrees that if any warranty or representation contained herein should prove to be untrue or incorrect in any material respect when made, the Secured Party may at its option terminate this Agreement and rescind the loan made hereunder, and Debtor shall pay to Secured Party the principal amount due on the Note together with accrued interest, plus costs and expenses incurred by the Secured Party arising out of enforcement of this provision.

ARTICLE V

Miscellaneous

1. No delay or omission of the Secured Party to exercise any remedy shall exhaust or impair any remedy of the Secured Party, nor shall any waiver by the Secured Party extend to or be taken to affect any subsequent default. No remedy hereunder is intended to be exclusive of any other remedy, but shall be cumulative to any and every other remedy to which the Secured Party is entitled. The Secured Party shall not be required first to look to, enforce or exhaust any other security, collateral or guarantees.

2. This Security Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Ohio.

3. Any notice or notification required to be given may be given by mailing such notice, postage prepaid, to Debtor's address as it appears at the beginning of this Security Agreement.

4. All the terms, conditions and covenants of this Security Agreement shall inure to the benefit of and bind the heirs, successors and assigns of the respective parties hereto.

5. This Security Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

6. This Security Agreement shall be subject to the right of the Lessee under the Lease to use and possess the Equipment so long as Lessee is not in default under the Lease.

7. This Security Agreement shall be without recourse against the Debtor except as to the warranties and covenants stated in Article II, Para-

graphs 1, 2 and 9 hereof, notwithstanding anything to the contrary contained in the Note.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

DEBTOR:

THE FIFTH THIRD LEASING
COMPANY

By: Tom Bohemread
Title Asst. Vice President

SECURED PARTY:

THE WESTERN AND SOUTHERN
LIFE INSURANCE COMPANY
SEPARATE ACCOUNT A

By: Wendall Sullivan
Wendall Sullivan
Vice President
By: W. F. Ledwin
W. F. Ledwin
Title Vice President

14Y

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing Security Agreement was acknowledged before me this 29th day of December, 1983 by Tom Bohemread, Assistant Vice President of The Fifth Third Leasing Company, Debtor in said Security Agreement, on behalf of the corporation.

Thomas C. Rink
Notary Public

THOMAS C. RINK, Attorney at Law
Notary Public, State of Ohio

My Commission has no expiration date.
Section 147.03 O. R. C.

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing Security Agreement was acknowledged before me this 30 day of December, 1983 by Wendall Sullivan, Vice President and W. F. Ledwin, Vice President of The Western and Southern Life Insurance Company Separate Account A, Secured Party in said Security Agreement, on behalf of the corporation.

Thomas C. Rink
Notary Public

THOMAS C. RINK, Attorney at Law
Notary Public, State of Ohio

My Commission has no expiration date.
Section 147.03 O. R. C.

SCHEDULE A TO SECURITY AGREEMENT
DATED DECEMBER 30, 1983 BETWEEN
THE FIFTH THIRD LEASING COMPANY, DEBTOR,
AND THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY
SEPARATE ACCOUNT A, SECURED PARTY

35 new PD 4000 (4000 cu. ft. capacity with Presser Differential)
Covered Hopper railcars manufactured by North American Car
Corporation, and bearing identifying numbers PGDX 101-135
inclusive.